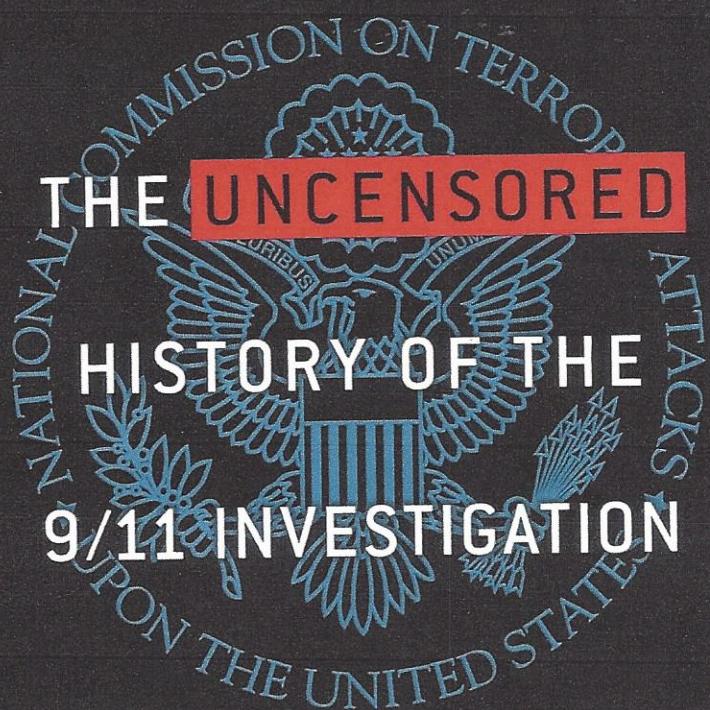


***HAVLISH PLAINTIFFS' RENEWED MOTION
FOR AN ORDER CREATING A COMMON BENEFIT FUND AND
AUTHORIZING CERTAIN DISBURSEMENTS THEREFROM***

EXHIBIT 9

THE
COMMISSION



PHILIP SHENON

K STREET OFFICES OF THE
9/11 COMMISSION

Washington, D.C.

JUNE 2004

Loyd Salvetti liked to say that he ran “the best museum you’ve never seen.” It was the CIA’s own museum at the agency’s headquarters in Virginia. And like the rest of the CIA compound, it was not open to the public. After a thirty-two-year career at the agency that included stints undercover in Europe and an assignment on the National Security Council in the 1990s, Salvetti was given his last assignment at the CIA as director of its Center for the Study of Intelligence. The center functioned as the CIA’s internal think tank and history department. It was also responsible for the museum, which boasted spyware artifacts that included a KGB-designed umbrella that doubled as a weapon (poison pellets were released from the tip) and a spy camera disguised as a matchbox; Kodak had built the miniature camera at the CIA’s request in the 1960s. Other items went much further back into the intelligence history, including one of the Enigma code machines used by the Germans in World War II. The cracking of the Enigma codes was considered one of the Allies’ great intelligence coups.

Salvetti had been recruited for the 9/11 commission by Philip Zelikow; they had been colleagues together on the NSC. Considered a Renaissance man among spies, Salvetti took on a variety of assignments in the investigation. He formed a close friendship with Lorry Fenner, the air force intelligence officer, if only because both had scholarly backgrounds; she held a PhD in history from the University of Michigan.

In June 2004, Fenner needed Salvetti’s help, albeit quietly. As a career military officer, she was not comfortable breaching the chain of command and did not feel comfortable approaching Zelikow directly about her dilemma with the NSA terrorism archives. This was not her job. Reviewing the NSA documents had nothing to do with her formal

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duties on the commission; her team was focused on the overall structure of the intelligence community, not the details of the government's surveillance of al-Qaeda. But she trusted Salvetti, and with only weeks left in the commission's investigation, she wanted to share her growing alarm that the NSA documents were going unread.

Since December, she had spent several days in the NSA reading room in downtown Washington, two or three hours at a time. And the more she read from the NSA files, the more worried she became about what the commission had missed. She was especially worried about the files she had seen that seemed to suggest the relationship between al-Qaeda and Iran, and between Osama bin Laden and the Iranian-backed terrorist group Hezbollah.

The NSA files were tough reading. They were densely written and were often cross-referenced with other documents not immediately available to the commission because they were still back at the agency's headquarters at Fort Meade in suburban Maryland. They would be made available if the commission wanted to see them, but it would take time to retrieve them.

When she saw the first of the material about Iran and al-Qaeda, Fenner hoped that someone had already been through all of it—that she was duplicating someone else's effort on the commission. Maybe her alarm was unwarranted, she thought, "but I thought that I'd still better tell somebody." She wanted Salvetti to be a second set of experienced eyes to help her look over what she was finding, someone "who would know more than I would."

At her urging, Salvetti walked over to the NSA's reading room and began to read some of the files that Fenner had set aside for him. It was not long before he could see that Fenner's worries were well-founded. The NSA files were a gold mine, full of critical information about al-Qaeda and other terrorist groups dating back to the early 1990s—material that the commission should have read through months earlier. Salvetti knew nothing about the detailed links between Iran and al-Qaeda, for example, and he feared no one else at the commission did, either.

"Holy moley," he said to himself, almost smacking his forehead as he read through the first of the documents and saw how important they were. "You come away with the inference that there was an implicit collaboration between the jihadists and elements of Hezbollah and Iran."

But what should he and Fenner do? The commission's final report was supposed to be completed within days: "It was the eleventh hour."

That al-Qaeda had contacts with Iran and Hezbollah had been reported for years. There were well-documented communications between al-Qaeda and Iranian and Hezbollah officials when bin Laden's network was based in Sudan in the mid-1990s.

But the NSA files suggested that the ties were much more direct than had been previously known, and much more recent. Alarmingly, they showed that Iranian authorities had helped facilitate the travels of several of the 9/11 hijackers in the year before the attacks. There was nothing to suggest that Iran or Hezbollah leaders had knowledge of the 9/11 plot. But there was plenty of evidence to show that they had made special arrangements to allow many of the 9/11 hijackers to visit or pass through Iran.

According to the files, at least eight of the fourteen young Saudi men who were "muscle" hijackers on the 9/11 flights traveled through Iran between October 2000 and February 2001, when the plot was well advanced. In November, three of the young Saudis, who had obtained American visas only the month before, flew together from Saudi Arabia to Beirut and then on to Iran; the NSA files showed that an associate of a prominent Hezbollah official was on the same flight and that other senior Hezbollah figures were closely monitoring the travels of the three young Saudis. Later that month, two more of the "muscle" hijackers flew to Iran. There were similarities to the discoveries being made in the commission's "plot" team about the Saudi expatriates in San Diego and the help they provided to Nawaf al-Hazmi and Khalid al-Mihdhar. If these connections between the 9/11 terrorists and Iran and Tehran's allies in Hezbollah were all a coincidence, it was a remarkable one.

Salvetti thought that Doug MacEachin, the veteran CIA analyst, needed to see this, too. From his work on the commission, MacEachin was the commission's best historian on al-Qaeda. The NSA documents would mean even more to him than to Salvetti or Fenner. After a short visit to the NSA reading room, MacEachin was just as alarmed as they were.

"This is trouble," he said. "We've got to call Hayden." He was referring to General Michael Hayden, head of the NSA. The commission would need to organize a trip as soon as possible to the NSA's headquarters to review the rest of the material.

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To his credit, Zelikow immediately understood the implications of what Fenner had discovered: A huge archive of the intelligence community on al-Qaeda and terrorist threats had not been adequately reviewed. And he understood there was almost no time left to do it. He helped organize an early morning trip that weekend by Salvetti, MacEachin, and others to the NSA's headquarters in Maryland to begin poring over the files. The group left before 7:00 a.m. and stayed virtually all day.

They were escorted to a reading room at NSA headquarters to find huge piles of documents—the raw material on which the reports in the agency's downtown reading room in Washington were based—and set to work. "There were stacks and stacks of paper," MacEachin recalled. He sat himself at a table and began to read. "I was angry that I hadn't seen this before," he said.

The next morning at the commission's offices at K Street, the group began to organize the material they had gathered from the NSA that weekend and hurriedly wrote new passages of the final report. With so little time left, the passages might raise as many questions as they would answer. And at a time when the Bush administration seemed eager to engage in saber rattling with Iran, the staff could see the dangers of overstating what they had found about ties between al-Qaeda and Tehran. The Bush administration had gone to war in Iraq the year before based on faulty intelligence; Fenner and her colleagues did not want to see the same thing happen with Iran.

"There is strong evidence that Iran facilitated the transit of al-Qaeda members into and out of Afghanistan before 9/11, and some of these were future 9/11 hijackers," MacEachin and the others wrote, documenting the NSA reports about the movements of the 9/11 hijackers in and out of Iran before the fall of 2001. "We believe this topic requires future investigation by the U.S. government."

What was left unsaid in the report, although the staff knew it perfectly well, was that the NSA archives almost certainly contained other vital information about al-Qaeda and its history. But there was no time left to search for it. Zelikow would later admit he too was worried that important classified information had never been reviewed at the NSA and elsewhere in the government before the 9/11 commission shut its doors, that critical evidence about bin Laden's terrorist network sat buried in government files, unread to this day. By July 2004, it was just too late to keep digging. 